

Internal Revenue Service

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Legend:

Taxpayer =

State =

Date 1 =

Year 1 =

a =

b =

c =

d =

Partnership =

Partners =

Dear

This is in reply to a letter dated June 28, 2012, requesting a ruling on behalf of Taxpayer. Taxpayer has requested a ruling regarding the definition of “qualified health care property” under section 856(e)(6)(D)(i) of the Internal Revenue Code, for purposes of the related-party rent exception of section 856(d)(8)(B).

Facts:

Taxpayer was incorporated under the laws of State on Date 1 and made an election under section 856 to be taxed as a real estate investment trust (REIT) for its Year 1 taxable year. Taxpayer uses an overall accrual method of accounting and the calendar year as its taxable year.

Taxpayer owns a a% membership interest in Partnership. Partnership's primary business is the acquisition, ownership, and leasing of health care properties, which currently consists of b separate facilities (the "Facilities"). All of the Facilities are currently leased to a single member limited liability company owned by Partners.

Taxpayer desires to have Partnership form a wholly-owned corporation that will make the joint election with Taxpayer to be treated as a taxable REIT subsidiary ("TRS"). Partnership and Partners intend for the TRS to become the lessee of the Facilities, which in turn will hire an eligible independent contractor to operate them.

The Facilities are senior living communities, c of which contain both independent living ("IL") units and assisted living ("AL") units (the "Mixed-Use Communities"), and d which is licensed solely as AL units used entirely for memory care ("MC") patients. MC is a subset of assisted living, being licensed in each state pursuant to the assisted living licensing statutes. Residents of MC units are provided additional specialized care designed for persons with Alzheimer's, dementia, or other memory issues. The Mixed-Use Communities compose both commingled and large campus-style facilities. The commingled facilities consist of units contained in one building, all of which are licensed as AL units but are used for either AL residents or IL residents, depending on the need or demand. The large campus-style facilities consist of units that are specifically designated as IL, AL, or MC.

The IL and AL units in each of these Mixed-Use Communities share common area facilities for front desk reception, social activities, and fitness activities. In the larger facilities, there are additional secondary reception areas in the AL and MC areas. Except for specialized events for MC residents, the same events and activities are offered for all residents regardless of the type of unit in which they reside. Each Mixed-Use Community is, and will be operated and marketed as, one integrated community with different service options and units available.

Potential residents speak to the Director of Sales and Marketing at each property, whether interested in IL or AL unit living. Generally, the same housekeeping, maintenance, kitchen and food services, administrative, and activities staff provide services for both IL and AL residents and are trained to handle all needs of the

residents. Although nurses and other clinical personnel primarily assist the AL residents, they also assist with the assessments that must be performed on each resident before they move into a community. This assessment determines whether the resident will be placed in an AL or IL unit. All personnel, including clinical, also assist IL residents in the event of an emergency, and clinical staff assist in conducting regular preventative health screenings that are provided at no additional cost for all residents.

All residents are provided with the following core services, all of which are included in the monthly service fee: utilities; certain furnishings in units; property maintenance; access to fully furnished common areas; social and recreational activities; daily monitoring and room checks; daily meals in a community dining room; transportation to doctors offices, banks, and retail stores; housekeeping; weekly linen service; and medication ordering/filling assistance. Mobility assistance and dietary services are available. Additional services are made available for an additional charge, such as room service. Staff members are awake and alert at the facilities on a 24-hour schedule ready to respond to any emergencies. Each unit also contains an emergency call button that contacts the front desk, which is staffed 24 hours a day, seven days a week. Most staff is trained in CPR, first aid, and to identify changes in health, but are instructed to call 911 for medical emergencies. Additionally, there are in excess of 500 unaffiliated outside caregivers registered with the Mixed-Use Communities that provide services predominantly to IL residents under direct contracts with the residents.

In addition to the standard services, AL residents receive assistance with activities of daily living (ADLs) including bathing, dressing, toileting, ambulating, and eating. Caregivers may also prepare and administer medications to the AL residents. Caregivers also routinely check on the AL residents throughout the day.

The AL units in each of the Facilities are licensed under the laws of the applicable state agencies in which the property is located. Each state requires AL residents to have a service plan agreement. IL residents are also given a service plan agreement, often with the clarification that the resident will not be receiving any ADLs or medication management. The service plan agreement states the scope of services to be provided and defines the levels of care available. A service plan is developed upon admission to the community and is updated regularly, including when there is a significant change in the resident's condition.

Employees are trained to inform IL residents and families if they observe a change in a resident's condition that might require a move to an AL service plan agreement. Transitioning from an IL unit to an AL unit within a Mixed-Use Community may require a move to an available AL unit, an update of the resident's service plan,

and an increase in the resident's monthly fee. In commingled communities, no move is necessary.

In each Mixed-Use Community, there are a significant number of AL units and a significant portion of the gross income is from the AL units. The number of AL and IL units is determined from a market perspective, and occupancy can fluctuate due to various factors.

Law and Analysis:

Section 856(c)(2) provides that at least 95 percent of a REIT's gross income must be derived from, among other sources, rents from real property.

Section 856(c)(3) provides that at least 75 percent of a REIT's gross income must be derived from, among other sources, rents from real property.

Section 856(d)(1) provides that rents from real property include (subject to exclusions provided in section 856(d)(2)): (A) rents from interests in real property; (B) charges for services customarily furnished or rendered in connection with the rental of real property, whether or not such charges are separately stated; and (C) rent attributable to personal property leased under, or in connection with, a lease of real property, but only if the rent attributable to the personal property for the taxable year does not exceed 15 percent of the total rent for the tax year attributable to both the real and personal property leased under, or in connection with, the lease.

Section 856(d)(2)(B) provides that rents from real property does not include amounts received directly or indirectly from a corporation if the REIT owns 10 percent or more of the total combined voting power or 10 percent or more of the total value of the shares of the corporation.

Section 856(d)(8)(B) provides that amounts paid to a REIT by a TRS shall not be excluded from rents from real property by reason of section 856(d)(2)(B) when a REIT leases a qualified lodging facility or qualified health care property to a TRS, and the facility or property is operated on behalf of the TRS by a person who is an eligible independent contractor.

Section 856(e)(6)(D)(i) defines qualified health care property as any real property which is a health care facility.

A "health care facility" is defined in section 856(e)(6)(D)(ii) as a hospital, nursing facility, assisted living facility, congregate care facility, qualified continuing care facility

(as defined in section 7872(g)(4)), or other licensed facility which extends medical or nursing or ancillary services to patients, and which was operated by a provider of such services that is eligible for participation in the Medicare program under Title XVII of the Social Security Act [subchapter XVIII of chapter 7 of Title 42 (42 U.S.C.A. § 1395 et seq.)] with respect to the facility.

Under § 1.856-3(g), a REIT that is a partner in a partnership is deemed to own its proportionate share of each of the assets of the partnership and to be entitled to the income of the partnership attributable to that share. For purposes of § 856 the interest of a partner in the partnership's assets is determined in accordance with the partner's capital interest in the partnership. The character of the various assets in the hands of the partnership and items of gross income of the partnership retain the same character in the hands of the partners for all purposes of § 856.

In the present case, each Facility is located in one building or on the same campus, and all of the AL units are licensed by the state in which they are located. When a resident eventually requires ADLs, the resident may transition from an IL unit to an AL unit (depending upon availability), or in the case at some Facilities, the IL unit may be converted to an AL unit. While not all of the residents of the Facilities receive assisted living services, a significant number of units in each of the Facilities are currently occupied as AL units.

Conclusion:

Based on the facts as represented, we rule that the Facilities are health care facilities within the meaning of section 856(e)(6)(D)(ii). Accordingly, amounts paid Taxpayer by its TRS shall not be excluded from rents from real property by reason of section 856(d)(2)(B) so long as the property is operated on behalf of the TRS by an eligible independent contractor.

Except as specifically ruled upon above, no opinion is expressed concerning any federal income tax consequences relating to the facts herein under any other provision of the Code. Specifically, we do not rule whether Taxpayer otherwise qualifies as a REIT under part II of subchapter M of Chapter 1 of the Code.

This ruling is directed only to the taxpayer requesting it. Taxpayer should attach a copy of this ruling to each tax return to which it applies. Section 6110(k)(3) of the Code provides that this ruling may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Robert Martin

Robert Martin

Senior Technician Reviewer, Branch 1

Office of Associate Chief Counsel

(Financial Institutions & Products)

Enclosures:

Copy of this letter

Copy for section 6110 purposes

cc: